

PATENTS
112007-0008

of the subject matter of this application, and then asked to speak with the Examiner's supervisory examiner. The Examiner stated that her supervisory examiner was unavailable, but that she would have him contact counsel to discuss this matter.

Having not heard from either the supervisory examiner or the Examiner, counsel again called the Examiner on June 22, 1999. The Examiner stated that she would again ask her supervisory examiner to contact counsel.

Remarks

In the Final Office Action, claims 1-5, 7-15 and 17-20 were rejected under 35 U.S.C. §103 in view of U.S. Patent No. 5,584,035 to Duggan et al. (hereinafter "Duggan") in view of H. Norr, *Cyberdog Could Be A Breakthrough If It's Kept On A Leash MacWeek*, Vol. 8, No. 45, p. 50 (Nov. 14, 1994) (hereinafter "Norr"). Claims 6 and 16 were rejected under §103 based on Duggan, Norr and Harkey et al. *Object Component Suites: The Whole Is Greater Than The Parts Datamation*, Vol 41, No. 3, p. 44 (Feb. 15, 1995).

At ¶¶ 3-6 of Rule 1.131 Declaration submitted on behalf of Apple, Ms. Harrison presents facts, based on her own personal knowledge, demonstrating that the present invention had been completed and was working for its intended purpose in California prior to November 1994. Accordingly, applicants submit that the present invention was reduced to practice in this country prior to November 1994, which is the effective date of the Norr reference. Indeed, in the Final Office Action, the Examiner did not contest the sufficiency of the factual averments establishing reduction to practice prior to November 1994. In view of the Declaration, the Norr reference is no longer a bar to the grant of a

PATENTS
112007-0008

patent on this application, and since all of the rejections are based, at least in part, on Norr, the removal of Norr as a reference renders the claims in condition for allowance.

Applicants further submit that the Rule 1.131 Declaration is made by a proper person. In particular, at ¶715.04, the M.P.E.P. simply provides that a Rule 1.131 Declaration may be made by the "assignee or other party in interest when it is not possible to produce the affidavit or declaration of the inventor." To applicants' knowledge, neither 37 C.F.R. nor the M.P.E.P. specifies any particular format or signature requirement for assignee declarations, and, furthermore, the Examiner has not referred to any such requirement. As set forth above, Ms. Harrison avers, at ¶¶ 1 and 3 of the Declaration, that she is an Engineering Manager at Apple, that Apple is the assignee of the present application, and that the inventors are no longer employed by Apple. Since the inventors are shown to be not available, the declaration may be made by the assignee. As noted, moreover, the declarant is a manager at Apple. Thus, applicants submit that the Declaration, which on its face clearly establishes that it is being submitted on behalf of the assignee, satisfies the requirements of 37 C.F.R. §1.131 and the M.P.E.P. Applicants further submit that it is improper for the PTO to challenge whether Ms. Harrison has the authority to submit a declaration on behalf of the assignee. See Herman v. Williams Brooks Shoe Co., 39 U.S.P.Q.2d 1773, 1777 (S.D.N.Y. 1996) (ruling that "the PTO is required to accept Rule 131 Affidavits at face value, and without investigation").

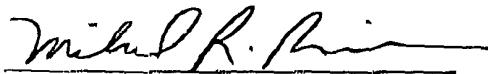
In sum, applicants submit that it was improper for the Examiner to reject the Rule 1.131 Declaration, and that the application is in condition for allowance and early favorable action is requested.

PATENTS
112007-0008

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No. 03-1237.

Respectfully submitted,



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